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Re Lim Szu Ang; ex p Kewangan Utama Bhd

HIGH COURT (MIRI) — BANKRUPTCY PROCEEDING NO 29–175 OF 2000 (MR)
ABDUL AZIZ ABDUL RAHIM JC
13 APRIL 2004

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Limitation — Enforcement of judgment — Bankruptcy notice issued — Arrears on interest claim — Whether action on a judgment or enforcement of judgment — Whether time barred after three years or twelve years — Sarawak Limitation Ordinance (Cap 49) arts 44 and 99

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This was the judgment debtor's appeal against the senior assistant registrar's decision dismissing the judgment debtor's application to set aside the bankruptcy notice and the creditor's petition. The main ground for the judgment debtor's application was that the bankruptcy notice and the creditor's petition by the judgment creditor were time barred because the judgment creditor was claiming arrears on interests well after the period of

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three years after the interest became due; therefore the claim offended art 44 of the Schedule to Sarawak Limitation Ordinance (Cap 49) ('the Sarawak Ordinance'). To this argument on limitation, the judgment creditor responded by arguing that art 44 of the Schedule did not apply, instead art 98 of the Schedule to the Sarawak Ordinance applied because the judgment creditor

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may enforce judgment within 12 years. Therefore, there was only one issue to be decided in this appeal, that was the issue of limitation. In relation to this, it was the question of whether art 44 or art 98 to the Schedule of the Sarawak Ordinance applied.

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Held, allowing the judgment debtor's appeal with costs:

(1) Order 45 r 1(1) of the Rules of the High Court 1980 ('the RHC') provides that a judgment or order of the payment of money, not being a judgment or order for payment of money into court, may be enforced by one or more of the methods specified under paras (a)–(e) of r 1(1).

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It is obvious that a bankruptcy proceeding is not one of the method specified. The consent order in this instant case was obviously a consent order or judgment for the payment of money. Therefore, if the judgment creditor/plaintiff wanted to enforce the judgment or order in this instant case he must use one of the method of enforcement as specified in O45

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r 1(1) of the RHC. In the light of these provisions, the commencement of a bankruptcy proceeding is not an enforcement of a judgment or order (see para 11).

(2) A bankruptcy proceeding is a proceeding that would eventually result in the issuing of adjudicating and receiving orders whereby the judgment

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debtor is required to account for his assets and liabilities to an official receiver or official assignee (now known as the Director General of Insolvency), as the case may be, for the purpose of satisfying all its

creditors including the judgment creditor who has petitioned for the bankruptcy (see para 11).

(3) Bankruptcy proceedings is an action on a judgment but not an enforcement of the judgment within the meaning of O 45 r 1(1) of the RHC (see para 12).

(4) In this case, the period of three years for a claim on the interest on the judgment sum in the consent order ran from 9 October 1995, the date of the consent order, and expired on 8 October 1998. In the instant case, the bankruptcy notice was issued on 9 May 2000, about one year and seven months after the expiry of the limitation period under art 44 of the Sarawak Ordinance. Likewise, the creditor's petition was presented on 17 November 2000, about two years and one month after the expiry of the limitation period under the same article (see para 15).

(5) It was obvious that the bankruptcy notice dated 9 May 2000, which included the claim for interest, was issued three years after the period the interest became due. Thus applying the Federal Court decision in *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385, it was clear that the bankruptcy notice was issued out of time under art 44 of the Sarawak Ordinance and therefore was invalid (see para 18).

(6) If the bankruptcy notice was invalid and bad in law, the creditor's petition that followed in consequence of it would also be bad in law. This was so because the petition was pre-empted by an invalid bankruptcy notice (see para 18).

[**Bahasa Malaysia summary**

Ini adalah rayuan pemiutang penghakiman terhadap keputusan penolong pendaftar kanan yang menolak permohonan penghutang penghakiman untuk mengetepikan notis kebankrapan dan petisyen pemiutang. Alasan utama untuk permohonan penghutang penghakiman adalah bahawa notis kebankrapan dan petisyen pemiutang oleh pemiutang penghakiman telah luput had masa kerana pemiutang penghakiman menuntut tunggakan atas faedah melebihi tempoh tiga tahun selepas faedah itu perlu dibayar; oleh itu tuntutan itu bercanggah dengan perkara 44 Jadual kepada Ordinan Had Masa Sarawak (Bab 49) ('Ordinan Sarawak'). Berhubung hujah tentang had masa, pemiutang penghakiman menjawab dengan berhujah bahawa perkara perkara 44 Jadual kepada Ordinan Sarawak tidak terpakai kerana pemiutang penghakiman boleh menguatkuasakan penghakiman dalam tempoh 12 tahun. Oleh itu terdapat hanya satu persoalan untuk diputuskan dalam rayuan ini iaitu persoalan tentang had masa. Berkaitan ini, ia adalah persoalan tentang sama ada perkara 44 atau perkara 98 Jadual kepada Ordinan Sarawak adalah terpakai.

Diputuskan, membenarkan rayuan penghutang penghakiman dengan kos:

(1) Aturan 45 k 1(1) Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') memperuntukkan bahawa satu penghakiman atau perintah bayaran wang, yang bukan satu penghakiman atau perintah untuk bayaran wang ke mahkamah, boleh dikuatkuasakan oleh salah satu cara atau lebih yang ditetapkan di bawah perenggan (a)–(e) kepada k 1(1). Adalah jelas bahawa satu prosiding kebankrapan bukan salah satu daripada cara yang ditetapkan. Perintah persetujuan dalam kes semasa ini adalah jelas satu perinth persetujuan atau perintah untuk bayaran wang. Oleh itu, jika pemiutang penghakiman/plaintif ingin menguatkuasakan penghakiman atau perintah dalam kes semasa ini beliau harus menggunakan salah satu daripada cara penguatkuasaan yang ditetapkan dalam A 45 k 1(1) KMT. Berdasarkan peruntukan-peruntukan tersebut, permulaan prosiding kebankrapan bukan satu penguatkuasaan satu penghakiman atau perintah (lihat perenggan 11).

(2) Satu prosiding kebankrapan adalah satu prosiding yang akhirnya menyebabkan perintah adjudikasi dan penerimaan dikeluarkan di mana penghutang penghakiman dikehendaki mengemukakan aset-aset dan liabiliti-liabiliti beliau kepada pegawai penerima atau pegawai pemegang harta (sekarang dikenali sebagai Ketua Pengarah Ketaksolvenan), yang mana terpakai, bagi tujuan memuaskan hati semua pemiutangnya termasuklah pemiutang penghakiman yang membuat petisyen untuk kebankrapan (lihat perenggan 11).

(3) Prosiding kebankrapan adalah satu tindakan ke atas penghakiman tetapi bukan satu penguatkuasaan penghakiman dalam maksud A 45 k 1(1) KMT (lihat perenggan 12).

(4) Dalam kes ini, tempoh tiga tahun untuk membuat tuntutan ke atas faedah atas jumlah penghakiman dalam perintah persetujuan bermula pada 9 Oktober 1995, tarikh perintah persetujuan itu, dan luput pada 8 Oktober 1998. Dalam kes semasa, notis kebankrapan telah dikeluarkan pada 9 Mei 2000, lebih kurang setahun dan tujuh bulan selepas luput tempoh had masa di bawah perkara 44 Ordinan Sarawak. Begitu juga dengan petisyen pemiutang yang telah dikemukakan pada 17 November 2000, lebih kurang dua tahun dan satu bulan selepas luput tempoh had masa di bawah perkara yang sama (lihat perenggan 15).

(5) Adalah jelas bahawa notis kebankrapan bertarikh 9 Mei 2000, yang termasuklah tuntutan ke atas faedah, telah dikeluarkan tiga tahun selepas tempoh faedah tersebut perlu dibayar. Oleh itu dengan menerimapakai keputusan Mahkamah Persekutuan dalam *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385, adalah jelas bahawa notis kebankrapan itu telah dikeluarkan di luar had masa di bawah perkara 44 Ordinan Sarawak dan dengan itu adalah tidak sah (lihat perenggan 18).

(6) Jika notis kebankrapan adalah tidak sah dan salah di sisi undang-undang, petisyen pemiutang seterusnya juga tidak sah dan salah di sisi undang-undang. Ini adalah kerana petisyen tersebut terbantut akibat notis kebankrapan yang tidak sah (lihat perenggan 18).]

Notes

For a case on bankruptcy notice issued, see 9 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2197.

Cases referred to

Ali @ Abdul Aziz bin Hassan, Re; ex p HSBC Bank Malaysia Bhd [2003] 5 MLJ 536 (refd)
EON Finance Bhd v Lee Shin Koon [1997] MLJU 34(dist)
United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin [2002] 2 MLJ 385 (folld)
Yau Kin Mun, Re; ex p Public Bank Bhd [1999] 5 MLJ 497(refd)

Legislation referred to

Bankruptcy Act 1967 s 3(1)(i)
Limitation Act 1953 s 6(3)
Rules of the High Court 1980 O 45 r 1(1)
Sarawak Limitation Ordinance (Cap 49) arts 38, 40, 44, 97, 93, 94, 101

Merlyn Toh (Yi & Co) for the debtor/appellant.
Dominic Lai (Dominic Lai & Co) for the creditor/respondent.

Abdul Aziz Abdul Rahim JC:

[1] This is the judgment debtor's appeal (encl 44) against the senior assistant registrar's ('SAR') decision given on 14 July 2003 dismissing the judgment debtor's application (encl 32) to set aside the bankruptcy notice and the creditor's petition.

[2] The main ground for the judgment debtor's application in encl 32 is that the bankruptcy notice and the creditor's petition by the judgment creditor are time barred because the judgment creditor is claiming arrears on interests well after the period of three years after the interest became due; therefore the claim offends art 44 of the Schedule to Sarawak Limitation Ordinance (Cap 49) ('the Sarawak Ordinance').

[3] To this argument on limitation the judgment creditor responded by arguing that art 44 of the Schedule does not apply. Instead art 98 of the Schedule to the Sarawak Ordinance applies because the judgment creditor may enforce judgment within 12 years.

[4] Therefore there is only one issue to be decided in this appeal that is the issue of limitation. In relation to this it is the question of which article to the Schedule of the Sarawak Ordinance applies — is it art 44 or art 98?

[5] The background facts may be stated briefly as follows: The plaintiff (ie the judgment creditor) entered a Consent Order dated 10 October 1995 against the defendant (ie the judgment debtor) for two principal sums of RM19,490.89 and RM43,700 plus interest and costs. The interest on the judgment sums was awarded at 8%pa effective from 19 November 1994 The defendant did not satisfy the judgment sums.

[6] On 9 May 2000, that is about five years after the date of the consent order, the plaintiff took out a bankruptcy notice and served it on the defendant. When the defendant failed to comply with the bankruptcy notice, the plaintiff presented a creditor's petition dated 17 November 2000 and served it on the defendant.

[7] In the bankruptcy notice and the creditor's petition, the judgment creditor (ie the plaintiff) is claiming for the principal judgment sums and interest. However the interest that the judgment creditor is claiming from the judgment debtor (ie the defendant) is for the period from 19 November 1994, the date ordered in the consent order until the 9 May 2000, the date of the bankruptcy notice. The amount of interest for that period on the first judgment sum is RM 7,928.52 and the amount for the same period on the second judgment sum is RM19,146.58.

[8] The judgment debtor contends that the interest claim is time barred because it contravenes art 44 of Sarawak Ordinance. The Article provides that a claim for money payable for interest upon money due from the defendant to the plaintiff must be made not later than three years from the date the interest become due. It was argued on behalf of the defendant that since the consent order had ordered that the interest on the principal judgment sum is payable from 19 November 1994, the claim for interest by the judgment creditor in its bankruptcy notice dated 9 May 2000 and the creditor's petition dated 17 November 2000 is made outside the three year period allowable under art 44 of the Schedule to the Sarawak Ordinance.

[9] For the judgment creditor it was contended that the applicable provision in the Sarawak Ordinance is art 98 of the Schedule to the Ordinance, not art 44. Learned counsel for the judgment creditor, in his brief written submissions, argued that the judgement creditor is enforcing the judgment, obtained by the Consent Order by bankruptcy proceedings. Article 98 of the Schedule to the Sarawak Ordinance provides that the time limit for enforcement of a judgment obtained in Sarawak is twelve years from the date of the judgment. Therefore it was argued for the judgment creditor that the judgment creditor's bankruptcy notice and the creditor's petition are well within the time period allowable because they were issued and presented on 9 October 2000 and 17 November

2000 respectively, before the expiry of the twelve years period. It was pointed out that since the Consent Order was obtained on 10 October 1995, the judgment creditor has until 9 October 2007, that the date of expiry of the twelve years period under art 98, to commence bankruptcy proceedings against the judgment debtor.

[10] In my view, the issues raised in the learned counsels' submissions are as follows: Firstly, is a bankruptcy proceedings an enforcement of a judgment for the purpose of art 98 of the Schedule to the Ordinance. Secondly, if it is so, can the judgment creditor recover the interest on the judgment three years after the interest becomes due for the purpose of art 44 of the Schedule to the Ordinance.

[11] As to the first issue, O 45 r 1(1) of the RHC provides that a judgment or order of the payment of money, not being a judgment or order for payment of money into court, may be enforced by one or more of the methods specified under paras (a)–(e) of r 1(1). It is obvious that a bankruptcy proceedings is not one of the method specified. The consent order in this instant case is obviously a consent order or judgment for the payment of money. Therefore if the judgment creditor/plaintiff wanted to enforce the judgment or order in this instant case he must use one of the method of enforcement as specified in O 45 r 1(1) of the RHC. In the light of these provisions, it is my view that commencement of a bankruptcy proceedings is not an enforcement of a judgment or order. A bankruptcy proceedings is a proceedings that would eventually result in the issuing of adjudicating and receiving orders whereby the judgment debtor is required to account for his assets and liabilities to an official receiver or official assignee (now known as the Director General of Insolvency), as the case may be, for the purpose of satisfying all its creditors including the judgment creditor who has petitioned for the bankruptcy.

[12] Thus in my view the bankruptcy proceedings is an action on a judgment but not an enforcement of the judgment within the meaning of O45 r 1(1) of the RHC. An action on a judgment is not the same as enforcing a judgment. In enforcing a judgment, a party in whose favour the judgment is given is taking a proceeding against the adjudged party in order to force that other party to satisfy the terms of the judgment in accordance with the rules relating to the enforcement of judgments. But in an action on a judgment the party that obtained the judgment is not enforcing the judgment as understood under the rules. Instead, the party concerned is exercising his rights arising from the judgment, and given to him under the rules or a written law, by a separate and distinct action or proceedings. However, the outcome of such action or proceedings may result in the satisfaction of the judgment by the party against whom the judgment is obtained. That being the case, the submissions by the learned counsel for the judgment creditor that art 98 of the Ordinance does not prevent him from taking out the bankruptcy notice

and subsequently presenting the creditor's petition against the judgment debtor is not entirely incorrect. I am of that view because art 98 of the Sarawak Ordinance speaks about 'upon judgment obtained in Sarawak.' This appears to include enforcement of judgment as well as action on a judgment. However having considered the provisions of the Sarawak Ordinance as a whole I am incline to think that the more appropriate provision of the Sarawak Ordinance that is applicable to the judgment creditor is art 97 which provides that the limitation period for any suit instituted for which no period of limitation is provided elsewhere in the Schedule to the Sarawak Ordinance the period of limitation is six years. The word 'suit' is defined in s 2 of the Sarawak Ordinance as 'includes any action or proceedings.' To my mind, the definition is non-exhaustive and the term 'proceedings' may and could include bankruptcy proceedings. If I am right here, the judgment creditor was still within time when he commenced the bankruptcy proceedings against the judgment debtor; because under art 97 of the Sarawak Ordinance the judgment creditor had until 2001 to issue a bankruptcy notice and subsequently to file the creditor's petition.

[13] But the judgment debtor's case is not that the judgment creditor is time barred under art 97 or art 98 of the Sarawak Ordinance. The judgment debtor's case is that the bankruptcy notice and the creditor's petition are caught by art 44 of the Sarawak Ordinance because the judgment creditor has included the claim for payment of interest in the bankruptcy notice and the creditor's petition. The relevant question therefore is whether the interest claimed by the judgment creditor is time barred under art 44 of the Sarawak Ordinance.

[14] In *Re Yau Kin Mun; ex p Public Bank Bhd* [1999] 5 MLJ 497, Skinner JC (as he then was) held at p 503:

> … the words 'from the date on which the interest became due' must refer to the date of judgment and not the date stated in the judgment from which interest became payable because interest in respect of a judgment debt does not become due until a judgment actually passed and entered. It is only from that date that the right to be paid interest on the judgment debt arises.

[15] Although, the court then was dealing with s 6(3), the second limb, of the Limitation Act 1953 that is applicable only to West Malaysia, the second limb of that section is in substance similar to the wordings in art 44 of the Sarawak Ordinance, in that under the second limb to s 6(3) Limitation Act 1953 a claim for interest is limited to a period of six years from the date the interest becomes due whereas in art 44 of the Sarawak Ordinance the period is limited to three years. Thus in this case, the period of three years for a claim on the interest on the judgment sum in the consent order runs from 9 October 1995, the date of the consent order, and expired on the 8 October 1998. Inthe instant case the bankruptcy notice was issued on 9 May 2000, about one year and seven months after the expiry of the limitation period under art 44 of the Sarawak Ordinance, Likewise, the creditor's petition was presented on

17 November 2000, about two years and one month after the expiry of the limitation period under the same article.

[16] In *United Malayan Banking Corp Bhd v Ernest Cheong Yong Yin* [2002] 2 MLJ 385 (FC), the appellant obtained judgment against the respondent on 15October 1987 with interest awarded from 1 April 1986. On 24 January 1996, the appellant filed a bankruptcy notice against respondent for the principle sum and interest. The court answered the question on the construction of the second limb of s 6(3) of the Limitation Act 1953, that the act of recovery of the arrears of interests in respect of the judgment debt must be made within six years of the judgment and only up to the date the act of recovery. The court also said that the date on which interest on judgment debt became due is the judgment date. In this regard, the above passage quoted from the judgment in *Re Yau Kin Mun* is a correct statement of the law. However the point canvassed in *Re Yau Kin Mun* regarding the issuance of a bankruptcy notice after the expiry of the six years period for the recovery of interest on a judgment but before the expiry of twelve years period limited for the enforcement of a judgment is no longer correct and should not be followed in the face of the Federal Court's decision in *Ernest Cheong*. The Court in *Re Ali @ Abdul Aziz bin Hassan; ex parte HSBC Bank Malaysia Bhd* [2003] 5 MLJ 536 also did not follow *Re Yau Kin Mun* on the point. The court reasoned that *Ernest Cheong* was binding on it on the principle of stare decisis. I am of the same view in that I am too is bound by *Ernest Cheong*. However, to be fair to the learned judge in *Re Yau Kin Mun,* it must be noted that *Ernest Cheong* was decided later in time but before *Re Ali*. Had *Ernest Cheong* been decided before the decision in *Re Yau Kin Mun,* the decision in the latter case could have been different on this very point.

[17] In his brief written submissions, learned counsel for the judgment creditor argued that *Re Yau Kin Mun* and *Ernest Cheong* are not relevant and inapplicable to the instant case. He reasoned that the two cases dealt with s6(3) Limitation Act 1953 which is not applicable to Sarawak. The statute law on limitation that applies to Sarawak is the Sarawak Limitation Ordinance (Cap 49). Article 98 of the Sarawak Ordinance does not have the second limb similar to s 6(3) Limitation Act 1953. Whilst it is true that art 98 of the Sarawak Ordinance is not similarly worded as s 6(3) of the Limitation Act 1953 and does not have an identical or similar second limb as in the section the observations by the court in *Re Yau Kin Mun* and *Ernest Cheong* on the interpretation of the section, particularly the second limb, is highly pertinent and relevant to the interpretation of art 44 and art 98 of the Sarawak Ordinance. In my view, having regard to the language of art 44 and art 98 of the Sarawak Ordinance, the two articles are akin to the second and first limbs of s 6(3) Limitation Act 1953 respectively.

[18] On the facts of this instant case, it is obvious that the bankruptcy notice dated 9 May 2000, which included the claim for interest, was issued

three years after the period the interest became due. Thus applying the Federal Court decision in *Ernest Cheong*, it is clear that the bankruptcy notice was issued out of time under art 44 of the Sarawak Ordinance and therefore is invalid. A creditor is allowed to present a creditor's petition if a debtor has committed any act of bankruptcy specified under s 3(1) of the Bankruptcy Act 1967. One of these acts of bankruptcy is the failure of the debtor to satisfy the bankruptcy notice issued against him by the creditor — see s 3(1)(i) of the Bankruptcy Act 1967. Thus the presentation of the creditor's petition by a creditor is pre-empted by the issuance of the bankruptcy notice. Therefore, if the bankruptcy notice is invalid and bad in law, the creditor's petition that follows in consequence of it would also be bad in law. This is so because the petition is pre-empted by an invalid bankruptcy notice.

[19] Another argument advanced by the learned counsel for the judgment creditor is that art 98 of the Sarawak Ordinance specifically covers limitation on the computation of the period for the enforcement of a judgment. Since the judgment creditor in this case is 'enforcing' the consent order dated 10October 1995 then art 44 of the Ordinance has no application because it relates only to a claim of interest. He cited the case of *EON Finance Bhd v Lee Shin Koon* [1997] MLJU 34 in which the learned Tee Ah Sing J dealt with the issue of limitation under the Sarawak Ordinance and held that where art 94 of the Schedule to the Sarawak Ordinance specifically addressed the facts of the case, art 97 became inapplicable. He submitted that similar situation arises in this instant case in that there is specific provision in art 98 of the Schedule to the Sarawak Ordinance.

[20] But *EON Finance Bhd* is not a bankruptcy proceeding's case. It is a case in which the plaintiff was trying to recover a sum of RM306,519, interest and costs by a writ action. This sum is the shortfall of the total sum owed by the defendant to the plaintiff after taking into account the proceeds of a foreclosure proceedings that had taken place earlier. The issue before the court then is which limitation period in the Sarawak Ordinance is applicable in respect of the claim for the shortfall. Is it art 101 of the Sarawak Ordinance which relates to the enforcement of payment of money charged upon immovable property; or is it art 38 for money payable for money lent; or art 40 for money lent under an agreement and payable on demand; or art 93 for compensation for breach of contract not in writing and not specifically provided for in the Sarawak Ordinance; or art 94 for compensation for breach of contract in writing or art 98 for suit for which no limitation period of limitation is provided elsewhere in the Schedule to the Sarawak Ordinance. Plaintiff's counsel in *EON Finance Bhd* argued that art 97 was applicable and not art 40 because the shortfall was not money lent under an agreement and not payable on demand. He argued that art 97 is a general limitation whereby the limitation period started to run from the time the right to sue accrues. The defendant's counsel in that case, on the other hand, contended that the plaintiff's claim was time

barred under art 38 read together with art 94 or alternatively under art 40 read together with the same art 94. He argued that the loan in *EON Finance Bhd case* was released earlier and the memorandum of charge that secured the loan was only executed one month later, after the release of the loan. Having heard the counsels, the learned judge in *EON Finance Bhd case* (supra) concluded that the plaintiffs suit 'may be properly described as one for compensation for breach of contract under art 94 of the Limitation Ordinance' (see p 17 of the Law Report). Then, at the same page of the Law Report, the learned judge remarked as follows:

> Since the limitation period for the present suit has been provided for under Article 94, I am of the view that Article 97 is inapplicable, for Article 97 is only applicable in cases where suit for which no period of limitation is provided elsewhere in the Schedule.

[21] It is quite obvious that the facts in *EON* are different from the instant case and that the learned judge in *EON Finance Bhd* had come to his conclusion as such, based on his specific finding as to the nature of the plaintiff's claim on the evidence before him. Furthermore, in this instant case, there is also a specific provision as to limitation period in relation to claim for interest namely art 44 of the Sarawak Ordinance. Therefore in my view the plaintiff's reliance on *EON Finance Bhd* does not assist the plaintiff.

[22] It is also my view that *Ernest Cheong* and *Re Ali* are the cases that are more relevant and pertinent on the point. These cases dealt with limitation period relating to bankruptcy proceedings. Though the provisions as to the period of limitation in the two cases are provisions under the Limitation Act 1953 that is only applicable to Peninsular Malaysia and not to Sarawak, the principles enunciated by these cases may be applied in interpreting substantially similar provisions of art 44 of the Sarawak Ordinance.

[23] Therefore on the foregoing reasons, I allow the appeal by the judgment debtor to set aside the bankruptcy notice and the bankruptcy petition by the judgment creditor with costs. Costs to be taxed unless agreed.

Judgment debtor's appeal allowed with costs.

Reported by AG Kalidas